

## AMENDMENT TO TRUST AGREEMENT

This Amendment to Trust Agreement is dated as of the 17<sup>th</sup> day of November 2016, to amend that certain Trust Agreement dated March 6, 2015 (the "Trust Agreement"), by and between, Romic Environmental Technologies Corp., as Grantor, a California corporation (the "Grantor"), and MUFG Union Bank , N.A., a national banking association as Trustee (the "Trustee").

### RECITALS

A. WHEREAS, on March 6, 2015, Grantor and Trustee entered into the Trust Agreement, a true and correct copy of which is attached hereto;

B. WHEREAS, on October 15, 2015, Grantor ceased to exist after executing a General Assignment for the Benefit of Creditors in favor of Development Specialists, Inc.;

C. WHEREAS, the United States Environmental Protection Agency (the "EPA") is currently the designated beneficiary of the Trust Agreement, and the EPA, by letter attached hereto, requests that the Gila River Indian Community ("GRIC") be added as a beneficiary;

D. WHEREAS, the EPA pursuant to Section 16 of the Trust Agreement, desires to amend the Trust Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and undertakings set forth herein, and intending to be legally bound hereby, the EPA and the Trustee (the "parties") agree as follows:

1. Section 3 in the Trust Agreement is hereby amended to add "and the Gila River Indian Community (GRIC)" after the text "for the benefit of EPA."

2. Section 4 of the Trust Agreement is hereby amended so the first sentence reads: "The Trustee shall make payments from the Fund as the EPA Regional Administrator, or the GRIC Governor (or his/her designee) shall direct, in writing, to provide for the payment of the costs of corrective action of the facilities covered by this agreement."

Section 4 is also further amended to add the following paragraph:

"If, at any time during the term of this Agreement, the GRIC terminates performance of the corrective action, or fails to adequately perform the corrective action, the EPA shall notify the Trustee in writing. Upon receiving such written notice from the EPA, the disbursement procedures for GRIC set forth above shall immediately be suspended for costs of the corrective action. If the EPA determines that the GRIC has resumed corrective action under the terms of the AOC, the EPA shall so notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures shall be reinstated.

3. Section 9 of the Trust Agreement is hereby amended so the title reads: "Taxes, Expenses, and Trustee Compensation."

Section 9 is further amended so the second sentence reads: All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, and reasonable compensation for the Trustee's services in accordance with the attached Fee schedule, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

4. Section 12 is hereby deleted in its entirety and the following substituted in its place and stead:

"[RESERVED]"

5. Section 14 and Section 18 of the Trust Agreement are hereby amended to:
  - a. replace references to "the EPA Regional Administrator" with "the GRIC Governor or the EPA Regional Administrator;"
  - b. and replace references to "EPA" with "the GRIC or EPA."
6. All capitalized terms not otherwise defined are defined as set forth in the Trust Agreement. Except as set forth herein, the terms and conditions of the Trust Agreement remain in full force and effect.
7. This Amendment may be executed in multiple counterpart signature pages executed and delivered via facsimile transmission or via email with scan or email attachment will be deemed an original, but all of which shall constitute one and the same instrument. This Amendment shall be governed by and construed in accordance with the laws of the State of California.

**In Witness Whereof**, the parties hereto have caused this Amendment to Trust Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

Date: 11/17/16

By [signature]: 

Printed name: Jeff Scott

Title: Director, Land Division, EPA Region 9

State of California  
County of San Francisco

**FOR THE TRUSTEE:**

Date: \_\_\_\_\_

By [signature]: \_\_\_\_\_

Printed name:

Keith Sevigny

Title:

Vice President

State of California  
County of San Francisco

On this \_\_\_\_\_, before me personally came Keith Sevigny, to me known, who, being by me duly sworn, did depose and say that he is Vice President of MUFG Union Bank, N.A., the entity described in and which executed the above instrument; and that he signed his name thereto.

\_\_\_\_\_  
[Signature of Notary Public]

[

\_\_\_\_\_  
Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of San Francisco )

On November 17, 2016 before me, Laura Jean Hicks, notary public  
Date Here Insert Name and Title of the Officer

personally appeared Jeff Scott

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Laura Jean Hicks  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Amendment To Trust Agreement Document Date: 11/17/16  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

November 17, 2016

Mr. Keith Sevigny  
Vice President, Sr. Relationship Manager  
Corporate Trust Services  
MUFG Union Bank, N.A.  
350 California Street, 11<sup>th</sup> Floor  
San Francisco, CA 94104

Re: Romic Environmental Technologies Corp. Trust Agreement

Dear Mr. Sevigny:

By this letter, the Environmental Protection Agency (EPA) requests amendments to the Romic Environmental Technologies Corp. (Romic) Trust Agreement (attached), adding the Gila River Indian Community as a beneficiary and amending terms regarding Trustee Compensation.

On March 6, 2015, Romic as Grantor and MUFG Union Bank as Trustee entered into the Trust Agreement referenced above. The Trust Agreement establishes a trust fund for the benefit of EPA, as required by an Administrative Order on Consent entered into by Romic and EPA (U.S. EPA Docket No. 3008-09-2008-0001) for corrective action of the Romic facilities located in Chandler, Arizona, within the Gila River Indian Community.

On October 15, 2015, Romic ceased to exist after executing a General Assignment for the Benefit of Creditors in favor of Development Specialists, Inc. Pursuant to Section 16 of the Trust Agreement, "[t]his Agreement may be amended by an instrument in writing executed by ... the Trustee and the appropriate Regional Administrator if the Grantor ceases to exist." Since Romic has ceased to exist, EPA worked with the Trustee, MUFG Union Bank, to reach agreement on the attached amendment. The Regional Administrator has delegated authority to perform all functions related to financial assurance under the Resource Conservation and Recovery Act to the Director, Deputy Director, and Assistant Directors or equivalent of the Land Division (Delegation R9-SWDA-2).

Thank you for your prompt attention to this matter. If you have any questions, please contact Rebecca Sugerman in our Office of Regional Counsel, at 415-972-3893.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Scott", is written over a horizontal line.

Jeff Scott, Director  
Land Division

## Trust Agreement

Trust Agreement, the "Agreement," entered into as of March 6, 2015, by and between Romic Environmental Technologies Corp., a California corporation, the "Grantor," and MUFG Union Bank, National Association, a national bank, the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has entered into an Administrative Order on Consent on February 1, 2008 (U.S. EPA Docket No. 3008-09-2008-0001) requiring that the Grantor shall provide assurance that funds will be available when needed for corrective action at the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

### *Section 1. Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

*Section 2. Identification of Facilities and Cost Estimates.* This Agreement pertains to the facilities and cost estimates identified on attached Schedule A.

*Section 3. Establishment of Fund.* The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

*Section 4. Payment for Corrective Action.* The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of corrective action of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the EPA Regional Administrator from the Fund for corrective action expenditures in such amounts as the EPA Regional Administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

*Section 5. Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

*Section 6. Trustee Management.* The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In Investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest



of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that*:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. *Commingling and Investment.*** The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

**Section 8. *Express Powers of Trustee.*** Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. *Taxes and Expenses.*** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services



rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

**Section 10. Annual Valuation.** The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

**Section 13. Successor Trustee.** The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

**Section 15. Notice of Nonpayment.** The Trustee shall notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

**Section 16. Amendment of Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA


Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**Section 18. Immunity and Indemnification.** The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 19. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of California.

**Section 20. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is the functional equivalent, for corrective action, of the wording specified in 40 CFR 264.151(a)(1) as such regulations were constituted on the date first above written.

  
\_\_\_\_\_  
Signature of Grantor

Title: President

Attest:

[Title]

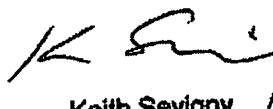
[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

 3/17/15  
Keith Sevigny  
Vice President

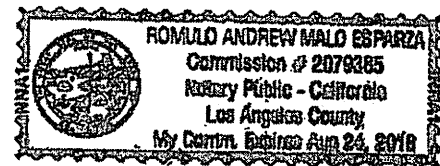
State of California

County of Los Angeles

Subscribed and sworn to before me on this 2nd day of March, 2015, by Wayne Kiso, who purported to be the President of Romic Environmental Technologies Corp., proved to me on the basis of satisfactory evidence to be the person who appeared before me.



[Signature of Notary Public]



## **SCHEDULE A**

### **List of Facilities and Cost Estimates**

<b>Name and Address of Facility</b>	<b>EPA ID Number</b>	<b>Type of Cost Estimate</b>	<b>Cost Estimate</b>
Former Romic Southwest Facility, 6760 West Allison Road, Lone Butte Industrial Park, Gila River Indian Community, Chandler, Arizona 85226	AZD 009 015 389	Corrective Action	\$425,000.00

## **SCHEDULE B**

### **List of Property Comprising Trust Fund**

None at the time of trust establishment. Funding of the Standby Trust Agreement is contingent upon drafts against the primary.